

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	
)	No. 63891-2-I
Respondent,)	
)	DIVISION ONE
v.)	
)	
FALINE MARSETTE,)	UNPUBLISHED OPINION
)	
Appellant.)	FILED: August 2, 2010

SPEARMAN, J. — A jury convicted Faline Marsette of malicious mischief in the first degree. She appeals, arguing that the State did not present sufficient evidence to convict her of the charged offense. We affirm.

FACTS

On July 25, 2008, Mardee Marquard and her boyfriend Derek Mayer went to a friend's wedding at the Muckleshoot Casino. Afterward they joined other wedding guests at a bar, where Marquard saw Faline Marsette for the first time that day. There was tension between the two women because Marsette had briefly dated Mayer while he and Marquard were temporarily separated in January of that year. Marquard and Mayer left the bar around 1:45 a.m. in

Marquard's black Chrysler Pacifica and eventually arrived at the residence of Laverne and Lionel Matthias, where a party was being held. Marquard dropped off Mayer and drove home, but returned to the party soon afterward.

Approximately 30 guests were present, many of whom were drinking alcohol. Many of the guests were relatives, friends, or acquaintances, as the Muckleshoot reservation is a small community. At some point, Marquard saw that Marsette was there, and the two made eye contact. Marsette was accompanied by her cousin, who was visiting from Montana. Marquard was upset and told Mayer she wanted to leave. The hosts made Marsette leave instead, and Marquard watched her leave through the front door. It was almost 4 a.m. by this point. Approximately 20 minutes later, Marquard saw Harold Price come through the front door and heard him yell that a black car was being busted up. When Marquard ran out of the residence toward her car, she saw the headlights of another car, which was backing up around a corner. She went back inside and called 911. Police arrived in approximately half an hour.

There was significant damage to the vehicle, including a broken windshield. Pieces of glass and of a landscaping brick were strewn about.

Law enforcement spoke with Harold Price and Matthew Jones, both of whom were guests at the party and the only eyewitnesses to the damaging of Marquard's vehicle. Price had gone out the front door when he saw a woman on top of the hood of a vehicle, hitting the windshield with a brick. He walked closer and recognized the woman as Marsette. He testified at trial that a car driven by

another woman approached, and Marsette got into the passenger side before the car was driven away in a forward direction. Price went back into the house and announced, "Somebody's car is out there gettin' fucked up."

Matthew Jones was familiar with Marsette and had had an intimate relationship with her in the past. He saw her arrive at the party with her cousin. He testified that he was standing near the front door when Price came in and announced that someone was jumping on a Jeep. Jones went outside and saw Marsette and her cousin on top of the hood of a car. He testified that Marsette's cousin jumped off and Marsette slipped and caught herself on the hood. Jones saw Marsette's cousin grab a rock and throw it, hitting the metal part of the vehicle between the driver's side window and the back passenger window. Marsette and her cousin then got into Marsette's car, and Marsette backed up the car and drove away. Both Jones and Price testified that they identified a photograph of Marsette as the person who damaged the car.

Marsette was charged by amended information with one count of malicious mischief in the first degree. The State alleged that, together with another, she intentionally caused over \$1,500 in damage to Marquard's vehicle. The jury found Marsette guilty. It was her first offense, and she received a low-end standard range sentence of 30 days in jail, fully converted to 240 hours of community service, and 24 months of community custody. She was also ordered not to have contact with Marquard for 10 years, except for incidental workplace contact.

DISCUSSION

Marsette argues that the State did not present sufficient evidence to convict her of the charged offense. We disagree, and affirm.

On a challenge to the sufficiency of the evidence, this Court must decide whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found all the essential elements of the crime beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980), overruled on other grounds by Schlup v. Delo, 513 U.S. 298, 115 S. Ct. 851, 130 L. Ed. 2d 808 (1995). The elements of a crime may be established by direct or circumstantial evidence, one being no more or less valuable than the other. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). All reasonable inferences must be drawn in favor of the State and interpreted most strongly against the defendant. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A claim of insufficiency of the evidence admits the truth of the State's evidence and all inferences that can reasonably be drawn therefrom. Id.

To convict Marsette of malicious mischief in the first degree, the State was required to prove beyond a reasonable doubt that she, as a principal or accomplice, knowingly and maliciously caused physical damage exceeding \$1,500 to Marquard's vehicle. See former RCW 9A.48.070(1)(a) (1983). Malice is defined as "an evil intent, wish, or design to vex, annoy, or injure another person." RCW 9A.04.110(12). It may be inferred "from an act done in willful disregard of the rights of another." Id. A person acts as an accomplice if, "[w]ith

knowledge that it will promote or facilitate the commission of the crime, he (i) solicits, commands, encourages, or requests such other person to commit it; or (ii) aids or agrees to aid such other person in planning or committing it.” RCW 9A.08.020(3)(a).

Marsette argues that the State’s evidence was insufficient because (1) the combined testimony of three witnesses created a narrative of events that would have been impossible;¹ (2) Price was not credible because he was intoxicated,² his line of sight was partially blocked, and his testimony on certain details was not consistent with the testimony of other witnesses;³ (3) Jones was the only credible witness to the actual damaging of Marquard’s vehicle, and his testimony only placed Marsette on top of the vehicle; and (4) there was no evidence that she acted as an accomplice to her cousin. She also contends that the similarity between Marsette and her cousin was noted by all three witnesses and would have been confusing where it was dark outside and both women were wearing black.

A review of the record indicates that there was sufficient evidence for a

¹ Marsette contends that, “[a]ccording to the combined testimony, Mr. Price saw the women drive away, went inside and announced what he had seen; Mr. Jones immediately went outside and saw the women drive away again, and Ms. Marquard then went outside and also saw the women drive away.” She argues that although Jones and Marquard could have seen the beginning and end of the same incident, Price’s testimony described a totally different scenario, and that no reasonable trier of fact could have found that “the same women drove away twice within moments.”

² Jones testified that Price was drunk at the party, and Price testified to having consumed approximately eight beers and a couple shots of liquor that evening.

³ Jones’ testimony that Marsette was driving the car in reverse was consistent with Marquard’s testimony of a car in reverse, while Price described the cousin in the driver’s seat, driving the car forward.

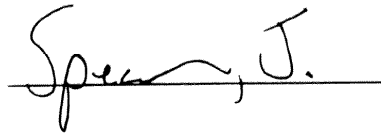
rational trier of fact to find all of the elements of malicious mischief in the first degree beyond a reasonable doubt. Marsette was seen leaving the party before the vehicle was damaged. Two eyewitnesses placed her on top of Marquard's vehicle, and one of them testified that he saw Marsette hitting the windshield with a brick. Furthermore, there was evidence that the act was motivated by malice. Marquard testified that there was tension between the two because Marsette dated Marquard's boyfriend while the couple was separated and that Marsette was told to leave the party, in essence, because of Marquard.

Marsette's suggestion that she and her cousin were so similar in appearance that the witnesses could have misidentified one as the other does not find consistent support in the record. Jones testified that Marsette and her cousin were both wearing black, were about the same height, and looked similar, but he also testified that Marsette was wearing a low-cut shirt while her cousin was not. 6/4/09 RP 116. Moreover, Price testified that Marsette had shorter hair while her cousin had long straight hair down her back, Marsette's cousin was a couple inches shorter than Marsette, and the two women were not about the same weight.

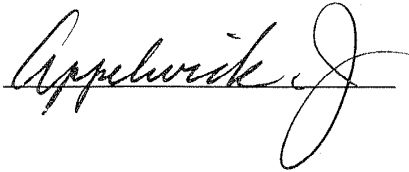
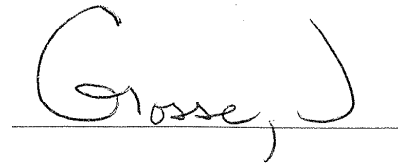
Finally, any inconsistencies presented by the combined testimony of witnesses and any issues of witness credibility are factors that the jury was entitled to consider in its weighing of the evidence. "Credibility determinations are for the trier of fact and cannot be reviewed on appeal." State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990) (citing State v. Casbeer, 48 Wn. App.

539, 740 P.2d 335 (1987)). Thus, this Court defers to the trier of fact on issues of conflicting testimony, credibility of witnesses, and persuasiveness of the evidence. State v. Walton, 64 Wn. App. 410, 415–16, 824 P.2d 533 (1992) (citing State v. Longuskie, 59 Wn. App. 838, 801 P.2d 1004 (1990)).

Affirmed.

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WE CONCUR:

A handwritten signature in cursive script, appearing to read "Appelwick, J.", written over a horizontal line.A handwritten signature in cursive script, appearing to read "Grosse, J.", written over a horizontal line.